

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE DIVISION
1:18 CV 340

NATHANIEL PETTY,

Plaintiff,

v.

ANDREW SAUL,
Commissioner of the Social Security
Administration,

Defendant.

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ORDER

This matter is before the Court on Plaintiff's Consent Motion for Fees Pursuant to the Equal Access to Justice Act 28 U.S.C. § 2412(d)(1)(A) (Doc. 13). The Motion indicates that the parties have agreed Plaintiff should be awarded \$4232.52 in attorney's fees.

An award of attorney's fees under the EAJA must be "reasonable." 28 U.S.C. 2412(A). It is within the Court's discretion to award attorney's fees above the statutory hourly rate. See Payne v. Sullivan, 977 F.2d 900, 903 (4th Cir. 1992).

In his brief in support of the Motion, Plaintiff states that the agreed upon amount, \$4232.52, has been calculated by multiplying the numbers of hours worked (20.95) by the statutory hourly rate (\$125) adjusted to account for cost-of-living increases. Plaintiff's attorney calculated this hourly rate using the

U.S. Department of Labor's Consumer Price Index for all urban consumers ("CPI-U"). (Doc. 14) at 4.

Courts in this district have awarded attorney's fees based on an hourly rate that accounts for a cost-of-living increase calculated using the CPI-U. See Ashcraft v. Berryhill, No. 3:13-CV-00417-RLV-DCK, 2017 WL 2273155, at *1 (W.D.N.C. May 24, 2017); Miller v. Colvin, No. 5:15-CV-00033-FDW, 2016 WL 110602, at *1 (W.D.N.C. Jan. 8, 2016); Rogers v. Astrue, No. 5:12-CV-00003-RLV-DCK, 2015 WL 9239000, at *2 (W.D.N.C. Dec. 17, 2015); United States v. Bailey, No. 1:11-CR-00010-MR-DLH, 2015 WL 1893610, at *32-35 (W.D.N.C. Apr. 27, 2015).

After review and consideration of the Motion and applicable authority, the Court is of the opinion that the Motion should be allowed.

IT IS THEREFORE ORDERED THAT:

- (1) Plaintiff's Consent Motion for Fees Pursuant to the Equal Access to Justice Act 28 U.S.C. § 2412(d)(1)(A) (Doc. 13) is **GRANTED**, and Plaintiff is awarded attorney's fees in the amount of \$4232.52 ("Fee Award").
- (2) As EAJA fees belong to the litigant and are subject to offset under the Treasury Offset Program, see Astrue v. Ratliff, 560 U.S. 586, 589 (2010), the Fee Award shall be paid by Defendant as follows:
 - a. If Plaintiff has federal debt registered with the Department of

the Treasury that may be offset by the Fee Award, such amount of the Fee Award as is necessary to satisfy Plaintiff's federal debt shall be so used, up to and including the entire amount of Fee Award.

- b. The remaining balance of the Fee Award after application of the offset, if any, described above shall be delivered by Defendant to Plaintiff's counsel on behalf of Plaintiff.

Signed: October 28, 2019

A handwritten signature in black ink, reading "W. Carleton Metcalf", written over a horizontal line.

W. Carleton Metcalf
United States Magistrate Judge

